

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 201 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SAVALIA BUILDERS

Versus

SHAKTI COOPERATIVE HOUSING SOCIETY LIMITED

Appearance:

SINGHI & BUCH ASSO. for Petitioners

MR RAVI R TRIPATHI for Respondent No. 1

CORAM : MR.JUSTICE R.BALIA.

Date of decision: 05/02/98

ORAL JUDGEMENT

This is an application for condonation of delay in filing the appeal. The appeal is delayed by 79 days. Initially, when the application was filed, the only cause shown in the application was that the delay has been occurred "due to unavoidable reasons." What that unavoidable reason was shrouded in mystery. An amendment thereafter was moved, which was allowed by the court on

18.11.97. By amendment, it was stated that appeal against the impugned order was ready to be filed on 20.1.97. The period of limitation was to expire on 24.1.97 but the same could not be filed as the clerk of the advocate of the applicants had been taken seriously ill and was away from work for a period of 4 months from January 1997. Apart from the fact that filing of appeal is the work of the advocate and not of the clerk, the amendment does not even disclose whether the clerk was not available to the advocate until 24.1.97, no date of sickness or the nature of sickness is disclosed in the application. Withholding the papers of this appeal for 79 days when according to the application the clerk was not available to file when the period of limitation for filing the same was expiring, there is no explanation whatsoever why the appeal was kept pending to be filed for 79 days after the period of limitation was over if for any reason due to sudden absence of clerk of advocate, he could not file the appeal at that time. The appellants also cannot be considered to be illiterate clients coming from Moffusil and not aware of the norms of litigation. There being absolutely no reason for filing this appeal beyond period of limitation, the application of condoning delay in filing appeal cannot be entertained and is thereby dismissed.

2. As delay in filing appeal has not been condoned, the appeal also cannot be entertained.

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